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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

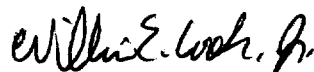
Re: MM Docket No. 93-25

Dear Ms. Searcy:

Please find enclosed, on behalf of the City of New York, an original and nine copies of Reply Comments in MM Docket No. 93-25.

Any questions regarding this submission should be referred to the undersigned.

Sincerely,


William E. Cook, Jr.

Enclosures

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JUL 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Section 25 of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 93-25

Direct Broadcast Satellite)
Public Service Obligations)

TO: The Commission

REPLY COMMENTS OF THE CITY OF NEW YORK

The City of New York ("City") hereby submits
these reply comments in the above-captioned proceeding.

I. Introduction

The public interest obligations that Section 25
of the Cable Television Consumer Protection and
Competition Act of 1992 ("1992 Act")¹ imposes on
providers of direct broadcast satellite ("DBS") service
preserve the competitive balance Congress desires
between cable operators and DBS operators, and plays a
vital role in fulfilling the 1992 Act's goal of
promoting "the availability to the public of a diversity

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

of views and information through cable television and other video distribution media." Section 2(b)(2), 1992 Act (emphasis added). The City supports the comments filed by the Local Governments in this proceeding and believes that the proposals in those comments will help the Commission achieve Congress' competitive and public interest goals.²

The City is concerned, however, about comments filed by the DBS industry and others in this proceeding. These commenters appear to read into Section 25 a number of limitations not contemplated by Congress. They share an unfounded belief that the "localism" and "public interest" provisions in the section are "optional" rather than mandatory, and that the noncommercial educational programming access provisions should be implemented in a manner that would limit the access of the providers of such programming to DBS services. If

unique service to viewers that cannot be matched by national programming and that Congress clearly intended be provided for in Section 25. The Commission should not be allowed to avoid imposing localism requirements, as the industry suggests, merely because the technology for the "perfect" community-oriented DBS system is not fully developed.

These and other concerns are addressed below.

II. Discussion

A. The Commission Should Require DBS Services to Provide Programming at the Most Local Level Technology Will Allow

Section 335(a) requires the Commission to examine the opportunities DBS provides for furthering "the principle of localism" and requires the Commission to examine the methods by which this principle "may be served through technological and other developments in, or regulation of, such service." The City strongly disagrees with the suggestion by several commenters that regulations requiring any form of localism would be inappropriate now because local DBS service is not technically or economically feasible.

The DBS industry comments take an unnecessarily restrictive view of "localism," equating that term solely with community-based service. The City believes this all or nothing approach to localism is unwarranted

and contrary to Congressional intent. As the Local Governments noted in their comments, Section 335(a) makes no mention of direct broadcast service to individual communities, rather it instructs the Commission to ensure that regulations under the 1992 Act reflect the principles of localism.³ At a minimum, therefore, DBS services must serve regional units, whether cities, states or groups of states, that have common interests which may not be shared by the entire country. As Local Governments noted, DBS providers now can set aside channel capacity for programming of certain regional interest, which any subscriber nationally would be able to obtain as part of its programming package. As DBS technology evolves, the Commission might consider imposing more specialized "local" programming requirements on DBS providers.

B. Channel Capacity Reserved Under Section 335 for Noncommercial Educational and Informational Programming Must Be Made Available to Program Suppliers at Free or Reduced Rates

Section 335(b) requires DBS services to reserve four to seven percent of channel capacity for noncommercial educational and informational programming and requires that when the supplier of such programming is a "national educational programming supplier," the

³ Comments of NATOA, et. al. at 7.

rate charged for channel capacity may not exceed 50 percent of direct costs. Several commenters suggest in their comments that the FCC should set 50 percent of direct costs as the required rate.⁴

The City agrees with those commenters who believe that Congress set the 50 percent rate as a cap, and that the Commission may establish a free rate or a lower rate for access of noncommercial educational programmers to DBS services.⁵ The purpose of Section 335(b) is to facilitate the use of DBS capacity by noncommercial educational users. Free or reduced rates for national educational program suppliers are necessary both to

⁴ Several commenters also urge the Commission to adopt a definition of "direct costs" expansive enough to permit DBS operators to recoup a number of costs truly indirect to the provision of public interest programming. For example, Primestar Partners suggests direct costs should include the per channel prorated cost of constructing, insuring, launching, controlling, tracking and maintaining the satellite and its ground station links. Comments of Primestar Partners, filed May 24, 1993, at 19. The City believes the suggestions of these commenters are contrary to the clear mandate of

ensure the continued production and availability of high-quality noncommercial programming to DBS subscribers, and to level the playing field between DBS services and cable operators, who are required to provide public, educational and governmental access channels at no cost to users.

C. The Term "Noncommercial Programming of an Educational or Informational Nature" Includes Local and Regional Sources of Such Programming

The City agrees with commenters -- inside the DBS industry and out -- that the term "noncommercial programming of an educational or informational nature" is not limited to programming supplied by "national educational program suppliers,"⁶ and those commenters that suggest that the term "national educational program supplier" be interpreted broadly to include most sources of noncommercial educational programming, regardless of their current geographical reach.⁷

However, the City disagrees with the specific conclusion of the Discovery Channel that "national educational program supplier" includes any commercial

⁶ See, e.g., Comments of DirecTV, Inc., filed May 25, 1993, at 24; Comments of Primestar Partners, filed May 24, 1993, at 20; Comments of the Consumer Federation of America, filed May 24, 1993, at 18.

⁷ Comments of Educational Broadcasting Corporation, filed May 24, 1993, at 4; Comments of the Consumer Federation of America, filed May 24, 1993, at 17.

entity which provides noncommercial programming of an educational or informational nature. The intent of Section 335(b) is to aid non-profit tax-exempt entities that provide educational and informational programming, rather than to aid commercial entities that provide programming they label as "educational" or "informational." Therefore, the Commission's determination of which programmers are "noncommercial educational suppliers" should be based on the nature of the programming they generally provide and the nature of the supplier itself (e.g., non-profit noncommercial entities).

D. The Commission Should Consider Imposing Additional "Public Interest" Requirements Pursuant to Section 335(a)

Section 335(a) requires the Commission to initiate a rulemaking "to impose . . . public interest or other requirements for providing video programming." Several commenters have suggested that because DBS is in an early stage of development, no requirements additional to the political broadcasting requirements should be imposed.⁸ The City agrees with the Local Governments and other commenters who state that the "public interest" provision is not an optional provision that the Commission may or may not apply. Congress was

⁸ E.g., Comments of Continental Satellite Corporation, filed May 4, 1993, at 28.

well aware of the fledgling state of DBS service when it imposed the "public interest" obligation in Section 335(a); if Congress had intended for such obligation to be optional, it would have clearly made it so.

III. CONCLUSION

The City urges the Commission to adopt regulations that fully implement the intent of Congress